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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,493	01/02/2002	Shin Koike	217788US0CONT	6986

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EXAMINER

WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 04/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/032,493

Applicant(s)

Koike et al.

Examiner

Kevin E. Weddington

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 23, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6-35 and 40-50 is/are pending in the application.
- 4a) Of the above, claim(s) 27-33 and 40-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-26, 34, and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 12 and 6) ☐ Other:

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Claims 6-35 and 40-50 are presented for examination.

Applicants' preliminary amendments filed January 2, 2002 and March 11, 2002; information disclosure statements filed March 11, 2002; June 28, 2002; November 14, 2002 and December 13, 2002 have been received and entered.

Applicants' election filed December 23, 2002 in response to the restriction requirement of November 22, 2002 has been received and entered. The applicants elected the invention described in claims 6-25, 34 and 35 (Group I) with traverse.

Applicants' traverse of the restriction requirement is found persuasive and claim 26 will be examined with the elected Group I. Claims 6-26, 34 and 35 will be examined.

Claims 27-33 and 40-50 are withdrawn from consideration as being drawn to the non-elected invention (37 CFR 1.142(b)).

#### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### *Double Patenting*

Claims 6-26, 34 and 35 of this application conflict with all the claims of Application No. 10/061,286. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one

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application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

### *Double Patenting*

Claims 6-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 and 11 of U.S. Patent No. 6,448,292. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application teaches an oil composition comprising about 0.1 to 59.8% by weight of a triglyceride, about 40 to 99.7% by weight of a diglyceride, about 0.1 to 10% by weight of a monoglyceride, and most about 5% by weight of a free fatty acid etc., and the patented application teaches the an oil composition comprising 10-40% by weight of a diglyceride, 40.1 to 89.8% by weight of a triglyceride and 0.1 to 10% by weight of a monoglyceride. Note the present application's ranges for each components fall within the ranges of the patented application. Clearly, one skilled in the art would have been motivated to select any percentage weight (within the ranges )of each component of the oil composition and achieve the same results in the absence of evidence to the contrary.

Claims 6-26 are not allowed.

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321<sup>©</sup> may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

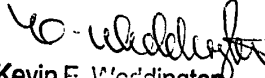
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The remaining references listed on the enclosed PTO-892 are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner K. Weddington whose telephone number is (703) 308-1235.

K. Weddington

April 2, 2003

  
Kevin E. Weddington  
Primary Examiner  
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